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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,254	08/22/2003	Tom Breton	CSI-2026	9420

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EXAMINER

ADAMS, AMANDA S

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 10/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/646,254

Applicant(s)

BRETON ET AL.

Examiner

Amanda Adams

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 15-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☒ Claim(s) 1 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 9/18/2006
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-14, drawn to a device, classified in class 606, subclass 139.
 - II. Claims 15-20, drawn to a method, classified in class 606, subclass 149.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case the device can be used to encircle and move any tissue within the body; such as inflamed tonsils, in order to provide a surgeon with better access to the part of the body that is to be operated on. Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

3. Applicant's election without traverse of claims 1-14 in the reply filed on September 18, 2006, is acknowledged. Applicant cancelled claims 15-20 without prejudice.

Claim Objections

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1. Claim1 is objected to because of the following informalities: the phrase "moved away for the conduit" in line 5 appears to have a typo regarding the word "for."

Appropriate correction is required.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 4-9, and 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Kato (US 6,979,337).
3. Kato discloses the invention substantially as claimed including an everting member with a loop-shaped portion (col. 4, lines 24-30) that is coupled to a handle (grip portions [32a] and [32b] or [7] as the handle), wherein the everting member comprises a flexible member having two ends (col. 4, lines 25-35). Regarding claim 4, Kato discloses that one of the ends is movable relative to the handle and the other is fixedly connected to the handle (fig. 5 [81] is the fixed end and [82] is the adjustable end). Regarding claim 5, Kato discloses that both of the ends can be fixedly attached to the handle (fig. 1 [33a] and [33b]). Kato also discloses that the flexible member comprises a pliable wire (col. 4, lines 61-67) and an adjustable diameter (col. 4, lines 42-45). Regarding claims 8 and those that depend from 8, Kato discloses a vessel support device that the vessel can be

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flipped over by using the evasion apparatus and wherein the vessel is coupled to and extends from the distal end of the support device (fig. 3A-3C [60]).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kato (US 6,979,337).

6. Kato discloses the invention substantially as claimed above but fails to disclose the particular embodiment where both ends of the flexible loop are slidable with respect to the handle. However, due to lack of criticality in the specification, having both ends of the loop being slidably mounted to the handle was shown to solve no particular problem, serve no particular purpose and provide no additional benefit as opposed to having one slidably mounted end and one fixedly attached end. Therefore, it would have been obvious to have both ends of the loop slidably attached to the handle because this structure is capable of working equally as well as if only one end were slidably attached.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amanda Adams whose telephone number is (571) 272-


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5577. The examiner can normally be reached on M-F, 8:00am-5:00pm, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ASA ASA 10/11/06


GLENN K. DAWSON
PRIMARY EXAMINER